

# **EXHIBIT 3**

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481 (RDD); Adv. Proc. No. 07-02619 (RDD);

Adv. Proc. No. 07-02242 (RDD); Adv. Proc. No. 07-02256 (RDD);

Adv. Proc. No. 07-02333 (RDD); Adv. Proc. No. 07-02580 (RDD);

Adv. Proc. No. 07-02661 (RDD); Adv. Proc. No. 07-02743 (RDD);

Adv. Proc. No. 07-02768 (RDD); Adv. Proc. No. 07-02769 (RDD);

Adv. Proc. No. 07-02790 (RDD); Adv. Proc. No. 07-02076 (RDD);

Adv. Proc. No. 07-02084 (RDD); Adv. Proc. No. 07-02096 (RDD);

Adv. Proc. No. 07-02125 (RDD); Adv. Proc. No. 07-02177 (RDD);

Adv. Proc. No. 07-02188 (RDD); Adv. Proc. No. 07-02211 (RDD);

Adv. Proc. No. 07-02212 (RDD); Adv. Proc. No. 07-02236 (RDD);

Adv. Proc. No. 07-02250 (RDD); Adv. Proc. No. 07-02262 (RDD);

Adv. Proc. No. 07-02270 (RDD); Adv. Proc. No. 07-02291 (RDD);

Adv. Proc. No. 07-02328 (RDD); Adv. Proc. No. 07-02337 (RDD);

Adv. Proc. No. 07-02348 (RDD); Adv. Proc. No. 07-02432 (RDD);

Adv. Proc. No. 07-02436 (RDD); Adv. Proc. No. 07-02449 (RDD);

Adv. Proc. No. 07-02479 (RDD); Adv. Proc. No. 07-02525 (RDD);

Adv. Proc. No. 07-02534 (RDD); Adv. Proc. No. 07-02539 (RDD);

Adv. Proc. No. 07-02551 (RDD); Adv. Proc. No. 07-02581 (RDD);

Adv. Proc. No. 07-02597 (RDD); Adv. Proc. No. 07-02618 (RDD);

Adv. Proc. No. 07-02623 (RDD); Adv. Proc. No. 07-02659 (RDD);

Adv. Proc. No. 07-02672 (RDD); Adv. Proc. No. 07-02702 (RDD);

Adv. Proc. No. 07-02723 (RDD); Adv. Proc. No. 07-02743 (RDD);

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1 Adv. Proc. No. 07-02744 (RDD); Adv. Proc. No. 07-02750 (RDD);

2 Adv. Proc. No. 07-02188 (RDD)

3 - - - - -x

4 In the Matter of:

5 DPH HOLDINGS CORP., et al.,

6 Reorganized Debtors.

7 - - - - -x

8 DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 SETECH INC., et al.,

12 Defendants.

13 - - - - -x

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 DUPONT COMPANY, et al.,

18 Defendants.

19 - - - - -x

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 ECO-BAT AMERICA LLC,

24 Defendant.

25 - - - - -x

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1 - - - - -x

2 DELPHI CORPORATION, et al.,

3 Plaintiffs,

4 -against-

5 GLOBE MOTORS INC.,

6 Defendant.

7 - - - - -x

8 DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 PHILIPS SEMICONDUCTOR, et al.,

12 Defendants.

13 - - - - -x

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 SUMMIT POLYMERS INC.,

18 Defendant.

19 - - - - -x

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 M & Q PLASTIC PRODUCTS, et al.,

24 Defendants.

25 - - - - -x

1       - - - - -x  
2       DELPHI CORPORATION, et al.,  
3                               Plaintiffs,  
4               -against-  
5       RSR CORPORATION, et al.,  
6                               Defendants.  
7       - - - - -x  
8       DELPHI CORPORATION, et al.,  
9                               Plaintiffs,  
10              -against-  
11       RSR/ECOBAT,  
12                              Defendant.  
13       - - - - -x  
14       DELPHI CORPORATION, et al.,  
15                              Plaintiffs,  
16              -against-  
17       TYCO et al.,  
18                              Defendants.  
19       - - - - -x  
20       DELPHI CORPORATION, et al.,  
21                              Plaintiffs,  
22              -against-  
23       AHAUS TOOL & ENGINEERING INC.,  
24                              Defendant.  
25       - - - - -x

- 5 -

1     - - - - -x  
2     DELPHI CORPORATION, et al.,  
3                     Plaintiffs,  
4             -against-  
5     A 1 SPECIALIZED SVC & SUPP., INC.,  
6                     Defendant.  
7     - - - - -x  
8     DELPHI CORPORATION, et al.,  
9                     Plaintiffs,  
10            -against-  
11    A-1 SPECIALIZED SERVICES,  
12                     Defendant.  
13    - - - - -x  
14    DELPHI CORPORATION, et al.,  
15                     Plaintiffs,  
16            -against-  
17    ATS AUTOMATION TOOLING SYSTEMS INC., et al.,  
18                     Defendants.  
19    - - - - -x  
20    DELPHI CORPORATION, et al.,  
21                     Plaintiffs,  
22            -against-  
23    CORNING INC., et al.,  
24                     Defendants.  
25    - - - - -x

- 6 -

1 - - - - -x

2 DELPHI CORPORATION, et al.,

3 Plaintiffs,

4 -against-

5 CRITECH RESEARCH INC.,

6 Defendant.

7 - - - - -x

8 DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 DOSHI PRETTL INTERNATIONAL, et al.,

12 Defendants.

13 - - - - -x

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 D & R TECHNOLOGY LLC, et al.,

18 Defendants.

19 - - - - -x

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 DSSI, et al.,

24 Defendants.

25 - - - - -x

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1 - - - - -x

2 DELPHI CORPORATION, et al.,

3 Plaintiffs,

4 -against-

5 DANOBAT MACHINE TOOL CO. INC.,

6 Defendant.

7 - - - - -x

8 DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 EDS, et al.,

12 Defendants.

13 - - - - -x

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 BP, et al.,

18 Defendants.

19 - - - - -x

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 CARLISLE, et al.,

24 Defendants.

25 - - - - -x

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1 - - - - -x

2 DELPHI CORPORATION, et al.,

3 Plaintiffs,

4 -against-

5 GKNS INTERMETALS,

6 Defendant.

7 - - - - -x

8 DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 EX-CELL-O MACHINE TOOLS INC.,

12 Defendant.

13 - - - - -x

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 JOHNSON CONTROLS, et al.,

18 Defendants.

19 - - - - -x

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 NILES USA INC., et al.,

24 Defendants.

25 - - - - -x

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1 - - - - -x

2 DELPHI CORPORATION, et al.,

3 Plaintiffs,

4 -against-

5 METHODE ELECTRONICS INC., et al.,

6 Defendants.

7 - - - - -x

8 DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 MICROCHIP,

12 Defendant.

13 - - - - -x

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 HEWLETT PACKARD, et al.,

18 Defendants.

19 - - - - -x

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 OLIN CORP,

24 Defendant.

25 - - - - -x

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1 - - - - -x

2 DELPHI CORPORATION, et al.,

3 Plaintiffs,

4 -against-

5 INTEC GROUP,

6 Defendant.

7 - - - - -x

8 DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 VALEO, et al.,

12 Defendants.

13 - - - - -x

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 VANGUARD DISTRIBUTORS,

18 Defendant.

19 - - - - -x

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 VICTORY PACKAGING, et al.,

24 Defendants.

25 - - - - -x

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1 - - - - -x

2 DELPHI CORPORATION, et al.,

3 Plaintiffs,

4 -against-

5 WAGNER-SMITH COMPANY,

6 Defendant.

7 - - - - -x

8 DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 WELLS FARGO BUSINESS, et al.,

12 Defendants.

13 - - - - -x

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 SELECT TOOL & DIE CORP.,

18 Defendant.

19 - - - - -x

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 SHUERT INDUSTRIES INC.,

24 Defendant.

25 - - - - -x

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1 - - - - -x

2 DELPHI CORPORATION, et al.,

3 Plaintiffs,

4 -against-

5 SUMITOMO, et al.,

6 Defendants.

7 - - - - -x

8 DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 TECH CENTRAL,

12 Defendant.

13 - - - - -x

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 PRUDENTIAL RELOCATION, et al.,

18 Defendants.

19 - - - - -x

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 LDI INCORPORATED,

24 Defendant.

25 - - - - -x

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1 - - - - -x

2 DELPHI CORPORATION, et al.,

3 Plaintiffs,

4 -against-

5 M & Q PLASTIC PRODUCTS, et al.,

6 Defendants.

7 - - - - -x

8 DELPHI CORPORATION, et al.,

9 Plaintiffs,

10 -against-

11 REPUBLIC ENGINEERED PRODUCTS, et al.,

12 Defendants.

13 - - - - -x

14 DELPHI CORPORATION, et al.,

15 Plaintiffs,

16 -against-

17 RIECK GROUP LLC,

18 Defendant.

19 - - - - -x

20 DELPHI CORPORATION, et al.,

21 Plaintiffs,

22 -against-

23 CRITECH RESEARCH INC.,

24 Defendant.

25 - - - - -x

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1 U.S. Bankruptcy Court  
2 300 Quarropas Street  
3 White Plains, New York  
4

5 July 22, 2010  
6 10:20 AM  
7

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9 B E F O R E:  
10 HON. ROBERT D. DRAIN  
11 U.S. BANKRUPTCY JUDGE  
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1 The movants' complaint that we haven't identified the  
2 specific debtor entity that made the transfer, and we haven't  
3 identified the specific transferee. And --

4 THE COURT: And that there's an antecedent debt.

5 MR. FISHER: An antecedent debt. And I think that the  
6 debtors have no choice but to concede that under Twombly and  
7 Iqbal, more detailed pleading would be required, at least  
8 according to some of the more recent cases, although, I don't  
9 know that there's a controlling case in this circuit yet  
10 describing exactly what that standard would entail.

11 And what we've attempted to do, and what we suggested  
12 in our opposition brief, was a practical way of cutting through  
13 this, and, essentially treating it as similar to a 12(e) motion  
14 and saying that to the extent that there's any defendant who  
15 cannot prepare its answer to this complaint, because knowing  
16 the date and the amount of the transfer is insufficient to  
17 allow it to track down the relevant information, we will  
18 supplement that and provide whatever additional information is  
19 needed in order to put them in a position to be able to respond  
20 to the complaint, which, at the end of the day, is what Rule 8,  
21 even after Twombly and Iqbal, is all about.

22 And so we're simply trying to be practical here.

23 THE COURT: Well, is there any -- two things. Is  
24 there any authority for the notion and -- I guess Twombly was  
25 after these were filed, too?



1 MR. FISHER: Yes.

2 THE COURT: Is there anything in the notion that you  
3 don't have to comply with them because it was filed beforehand?

4 MR. FISHER: I don't think that there's a case  
5 directly on point. Because, again, we have a situation where  
6 the case was filed before Twombly and Iqbal and then served  
7 after. I'm not aware of a case that's directly on point. So  
8 the question is how to bring these cases up to --

9 THE COURT: So then --

10 MR. FISHER: -- date with the new pleading standards.

11 THE COURT: Well, and on that, shouldn't there be a  
12 motion to amend? I mean, is there any authority for the  
13 mechanism you're proposing? I mean, if there's merit to the  
14 argument that you had filed these complaints under the laws  
15 that existed at the time, and there's, certainly, you know, the  
16 case law in the Southern District, was probably more on your  
17 side on that than not. As far as what you needed to show back  
18 then, wouldn't that just be a factor I'd take into account  
19 among other factors in your motion to amend? And then we'd  
20 have an amended complaint and everyone would know the complaint  
21 that they were looking to.

22 You know, if, in fact, you weren't able to show an  
23 antecedent debt, or you weren't able to show which debtor made  
24 the transfer, then, you know, there'd be a complaint that  
25 someone could move to dismiss even if, you know, I thought

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1 there was enough to let the complaint be filed. But at least  
2 they'd see it as a -- and that could be one of their factors in  
3 objecting to the motion to amend, is that this complaint has no  
4 chance of succeeding because they still haven't identified the  
5 transferor, for example.

6 MR. FISHER: We think that's there's something very  
7 technical about the argument that's being made here. And that  
8 as a practical matter, based on the information that is  
9 supplied in the complaint, the movants are in an adequate  
10 position to respond intelligently to the complaint.

11 Sure, we could bring a motion seeking leave to amend  
12 these complaints. Alternatively, if the Court is going to rule  
13 that the complaints need to be repled to comply with the  
14 Twombly/Iqbal standard, we could do that.

15 THE COURT: Well, I guess I want to go back to my  
16 earlier question. I haven't seen a solution like the one  
17 you've proposed; do you have authority for that?

18 MR. FISHER: I don't have a case, Your Honor --

19 THE COURT: Okay.

20 MR. FISHER: -- that essentially converts a 12(b)(6)  
21 motion to a 12(e) motion. But conceptually that is what we had  
22 in mind. But if the problem is if 12(e) requires more  
23 information than what had been --

24 THE COURT: I think it's more than just having the  
25 defendant come to you and say I'm puzzled, I don't know how to

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1 defend. I think it is an affirmative requirement to state a  
2 claim. And under Iqbal and Twombly and the cases, including  
3 Judge Gonzalez' case on preferences, there's certain key  
4 elements of the claim that require more than just the -- a  
5 recitation of the elements of the claim. I mean, that's really  
6 the -- that's really Twombly as opposed to Iqbal.

7 MR. FISHER: Right.

8 THE COURT: And that's, you know, basically, who made  
9 the transfer, and what was the antecedent debt? Something,  
10 other than just saying it was for antecedent debt. I mean, I  
11 think by listing the amount and the date, I think it was  
12 implicit that you're saying its defendant. But maybe I'm wrong  
13 about that. If you're asserting against some of the people 550  
14 relief then you probably should say how they got it.

15 MR. FISHER: Well, I think that it's just that --

16 THE COURT: Not immediate -- not the transferee but  
17 subsequent transferee relief.

18 MR. FISHER: The strange thing about applying Twombly  
19 and Iqbal to a preference case is that what does it mean to say  
20 that a preference claim is plausible? I mean, it's plausible  
21 that Delphi paid these defendants the amounts that are  
22 indicated on the complaint on the dates that are indicated.  
23 And it's plausible that those payments were on account of  
24 antecedent debt.

25 THE COURT: First of all, it's not Delphi, there's

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1 like forty-two debtors here. So it's not listed who did this.  
2 I think that's important. And that leaves the issue of  
3 antecedent debt.

4 I'm somewhat sympathetic to your point on that,  
5 although, the three judges that have considered this, including  
6 Judge Gonzalez, aren't. They all emphasize the need to say  
7 something about the antecedent debt, other than the conclusory  
8 statement that there's antecedent debt. Your point is well,  
9 why would any of the debtors be paying anyone unless there was  
10 an antecedent debt?

11 Well, the thing is it may not be antecedent, they may  
12 be paying in advance, they may be paying that day; COD. You  
13 know, that's the response I think.

14 MR. FISHER: And, Your Honor, it is important to say  
15 which debtor entity we're talking about. It is important to  
16 say exactly which transferee we're talking about. As a  
17 practical matter --

18 THE COURT: Let me say -- I'm going to cut you short.

19 MR. FISHER: Yes.

20 THE COURT: As a -- it seems to me the problem with  
21 what you're proposing is that you may not have a basis to say  
22 in your books and records that -- at least for the face of the  
23 complaint, that defendant X was owed a debt, that this was a  
24 payment on account of you may not have it. And I think your  
25 method basically sort of puts the onus on them to make that

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1 part of your case for you.

2 MR. FISHER: What we're trying to avoid, Your Honor,  
3 is a situation where we now go back and correct these  
4 complaints by identifying the specific entities where we think,  
5 as a practical matter, the movants know full well by checking  
6 their own records --

7 THE COURT: But that's not -- that's not -- I don't  
8 think that's the test, because, again, that shifts the burden  
9 of proof. You know, you basically force them to show we don't  
10 know.

11 MR. FISHER: Well, then, we go back and we provide  
12 them with this information. We could provide it to them in  
13 documentary form under 12(e), or we could provide it to them in  
14 the form of an amended complaint.

15 THE COURT: To me that's --

16 MR. FISHER: And then say it's a new motion to  
17 dismiss.

18 THE COURT: To me that's part of the merits of a  
19 motion to amend. If, in fact, they knew and it's no big deal  
20 and they know -- they've always known this, then that's a fact  
21 in your favor as well as the fact that the law changed. You  
22 know, but I think it should all be viewed in the context of a  
23 motion to amend.

24 Now, I have not reviewed every complaint. But as I --  
25 I've reviewed enough to see that I think they're form

1 service list, you're going to have someone looking at the  
2 notice.

3 MS. LEE: Your Honor --

4 THE COURT: But that's just a preliminary view because  
5 we haven't really gotten into that and I was telling you about  
6 ruling on this yet, this aspect of it.

7 MS. LEE: Your Honor, Cathy Lee. I represent Ambrake  
8 Corporation and also Sumitomo Wiring Systems USA. I just  
9 wanted to understand, sort of, the figures that Your Honor is  
10 laying out to make these sort of formative arguments and  
11 actually show what individualized prejudice is. Are you saying  
12 that we would do that in response to a motion to amend? And  
13 the reason that I ask --

14 THE COURT: No -- no. And I understand why you're  
15 asking me because I wasn't very clear on it.

16 MS. LEE: Okay.

17 THE COURT: People are free, in response to a motion  
18 to amend the complaint, to raise whatever ports people raise in  
19 response to motions to amend. That might include things like  
20 prejudice and delay and you know, that gets into lack of notice  
21 and all of that. It's in the context of a motion to amend. As  
22 far as the 4(m) issues are concerned, I'll -- if I'm inclined  
23 to grant the motion to amend, I still have to rule on the 4(m)  
24 issues because I'm not going to, obviously, give leave to  
25 amend, where I concluded that the complaint can't succeed

1 because I would undo my 4(m) orders.

2 So those -- but those 4(m) issues are already briefed  
3 and argued. So I'm not going to have any more argument on them  
4 in this context. You can raise them in the context of -- to  
5 the extent that it's appropriate to raise, in the context of a  
6 motion to amend.

7 MS. LEE: Okay.

8 THE COURT: And then I -- this is me where I was  
9 confusing you, I -- pardon me if you hear my rationale for  
10 setting it up that way. Giving you my preliminary view that I  
11 probably would not simply say -- at least I don't believe I  
12 would simply say that everyone gets off scot-free because of  
13 the movants' arguments under 4(m) and Rule 60 and due process.

14 So I would probably -- my inclination at this point,  
15 but I may change my mind after I review the transcript and look  
16 at the papers and the briefs again, would be to say that, you  
17 know, I'd probably have to look at those issues on a case-by-  
18 case basis to some extent too. I may not on some cases. I  
19 mean, the motion papers -- the individual movants' motions may  
20 be strong enough on that issue that I would rule in their  
21 favor. You know, I confess. You know, there are eighty-some  
22 motions to dismiss; I concentrated on the global issues which  
23 is what we've been dealt -- dealing with here. It may be when  
24 I look at all the pleadings, that there will be any number of  
25 people who I believe the complaint should be dismissed, even if

1 the disclosure in connection therewith were not misled by a  
2 position that's contrary to the position they're taking today.

3 (Pause)

4 On this point, although in each case the Court has to  
5 review the facts at hand so no general rule will apply in a  
6 generic way, see *In re Ampace Corp.*, 279 B.R. 145, 159 (Bankr.  
7 D. Del. 2002) and *In re I. Appel Corp.*, 300 B.R. 564, 568  
8 (S.D.N.Y. 2003) as well as *In re P.A. Bergner & Co.*, 140 F.3d  
9 1111, 1117 (7th Cir.1998). So that aspect of the motions to  
10 dismiss is denied.

11 The motions to dismiss generally also assert that the  
12 complaints as filed and served do not satisfy the pleading  
13 requirements of Rule 7008, incorporating Rule 8 of the Federal  
14 Rules of Civil Procedure. I agree with that assertion. And  
15 more specifically, the complaints assert preference causes of  
16 action under Section 547(b) of the Bankruptcy Code. In  
17 performing the analysis required by *Atlantic Corporation v.*  
18 *Twombly*, 550 U.S. 544, (2007) and *Ashcroft v. Iqbal*, 129 S.Ct.  
19 1937 (2009), the Court must do the following.

20 First, the Court must identify each element of the  
21 cause of action. Next the Court must identify the allegations  
22 that are not entitled to the assumption of truth because they  
23 are legal conclusions not factual allegations. Finally, the  
24 Court must assess the factual allegations in the context of the  
25 elements of the claim to determine whether they plausibly



1 suggest an entitlement to relief. See *Iqbal*, 129 S.Ct. at 149,  
2 147, and 151. The plausibility standard is not akin to a  
3 probability requirement but it asks for more than a sheer  
4 possibility that a defendant has acted unlawfully, *id.* at page  
5 149.

6 Here there are three key elements of a preference  
7 claim that are asserted only in a generic way, i.e. only in the  
8 sense of repeating the elements of the relevant statute and  
9 stating that as a result the defendant harmed the plaintiff,  
10 and therefore they do not satisfy the pleading requirements as  
11 set forth in *Twombly* and *Iqbal*.

12 First, the complaint does not identify the particular  
13 debtor, and there were over forty debtors here, who was the  
14 transferor. Secondly, the complaint does not allege a  
15 particular antecedent debt on which the transfer was on account  
16 of. And third, the complaint, where there are multiple  
17 transferees alleged, does not assert which defendant was the  
18 initial transferee and which defendants were subsequent  
19 transferees, those parties' rights being different under  
20 Section 550 of the Bankruptcy Code.

21 In a similar context where, as here, the complaint did  
22 identify the date of the transfer and the amount of the  
23 transfer, bankruptcy courts, including the court in this  
24 district have similarly concluded as I do now that the  
25 preference complaint does not pass muster under Rule 8. See *In*

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1 re Hydrogen, LLC, 2010 WL 1609, 536 (Bankr. S.D.N.Y., April 20,  
2 2010). In re McLaughlin, 415 B.R. 23 (Bankr. D.N.H. 2009)  
3 In re Caremerica Inc., 409 B.R. 737 (Bankr. E.D.N.C. 2009).

4 I've stated during oral argument why I believe all  
5 three of these elements of the claim need to be pled with more  
6 clarity in the context. In particular, while it may seem at  
7 first glance that anyone receiving money has to receive it for  
8 some purpose and therefore it's reasonable to infer in the  
9 context that that purpose is to pay an antecedent debt, that is  
10 not always the case. Debtors may pay COD or in advance. And  
11 in addition, in identifying the debt, a complaint may therefore  
12 also enable a debtor to show that the creditor, or the  
13 transferee, rather, received more than it would otherwise in a  
14 Chapter 7 case which would, in the case of a contract that had  
15 been subsequently assumed, be a basis for dismissing the claim.

16 So I concluded that the complaints need to be  
17 dismissed, and I've given DPH Holdings forty-five days from  
18 today to file a motion for each complaint seeking leave to  
19 amend each complaint. That motion should attach the form of  
20 complaint -- or must attach the form of complaint that would be  
21 proposed to be filed as an amended complaint. And if such a  
22 motion is not filed for any particular complaint, that  
23 complaint will be dismissed upon the movant submitting to me a  
24 proposed order dismissing the complaint, CC'ing on the e-mail  
25 counsel for DPH and stating that in fact notwithstanding my